IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 2037 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARODA MAHAJN PARABADI & KHODA DHOR PANJARAPOLE TRUST - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS NIYATI K SHAH for Applicant(s) : 1,
MR DIPEN DESAI APP for Respondent(s) : 1,
MR ASHOK K PADIA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/10/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Shri Dipen Desai waives service of Rule on behalf of the respondent No.1 and learned advocate Shri Padiya

for respondent No.2. At the joint request of the learned advocates appearing for the parties, this petition is taken upon for final hearing today.

2. The petitioner Naroda Mahajan Parabadi and Khoda Dhor Panjarapole Trust (“Panjarapole” for short) has in this petition challenged order dated 16.10.2007 passed by the learned Additional Session Judge, Ahmedabad (Rural) in Criminal Revision Application No.161 of 2007 filed by respondent No.2 herein.

3. Respondent No.2 was found carrying 27 cows in a tempo. A complaint was therefore, lodged alleging offence punishable under the provisions of Prevention to Cruelty to Animals Act as also under the Animal Preservation Act.

4. Respondent No.2 moved an application before the learned Judicial Magistrate First Class, Ahmedabad (Rural) seeking interim custody of the animals seized by the police. It may be noted that for safekeeping of the animals, custody was handed-over to the petitioner trust. After hearing the petitioner and other parties, the learned Magistrate rejected application of respondent No.2 for interim custody of animals.

5. Respondent No.2 thereupon filed Criminal Revision Application No.161 of 2007 before the learned Sessions Judge. This

application came to be allowed by impugned order dated 16.10.2007.

6. Appearing on behalf of the Panjarapole, Ms. Shah, learned advocate submitted that it is case of cruelty to the animals and it can be inferred that they were being transported for the purpose of slaughtering them.

6.2. She submitted that without hearing the Panjarapole, the learned Sessions Judge ought not to have allowed the Criminal Revision Application of respondent No.2. In this regard, reliance was placed on the decision of this Court dated 1.8.2007 passed in Special Criminal Application No.1184 of 2007 and other connected matters, a copy of which is produced at Annexure B.

7. On the other hand, learned advocate Shri Padia submitted that respondent No.2 deals in buying and selling of cows etc. and purpose of transporting them was not for slaughtering.

8. I have also heard Shri Dipen Desai, learned A.P.P. for the State.

9. Keeping all the questions open, primarily I find that the learned Sessions Judge ought not to have allowed the Criminal Revision Application of respondent No.2 without hearing the

petitioner herein. Apart from the decision of the learned Single Judge of this Court relied upon by the petitioner, in the present case, I find that the custody of animals was handed-over to the petitioner by the learned Magistrate for safekeeping. The application of respondent No.2 for handing over the custody thereof was rejected by the learned Magistrate after hearing the petitioner. Additionally one of the grounds taken by respondent No.2 before the learned Sessions Judge was that Panjarapole will not be able to take good care of the animals. In view of these combined factors, I find that the petitioner ought to have been heard before the learned Sessions Judge disposed of Criminal Revision Application of respondent No.2 granting custody of the animals.

10. In the result, only on this ground, this petition is allowed. The impugned order dated 16.10.2007 passed by the learned Sessions Judge is quashed. The matter is remanded for fresh disposal after hearing all sides including the petitioner herein. This may be done expeditiously and preferably within one month from the receipt of a copy of this order.

11. With these directions, the petition is disposed of. Rule is made absolute to the above extent.

(AKIL KURESHI, J.)

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